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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 SKYE BIOSCIENCE, INC.,

13 Plaintiff,

14 vs.

15 PARTNER RE IRELAND INSURANCE  
16 DAC,

17 Defendant.  
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Case No. 2:23-cv-01218

**COMPLAINT FOR**

**1. BREACH OF CONTRACT**

**2. TORTIOUS BREACH OF THE  
IMPLIED COVENANT OF GOOD  
FAITH AND FAIR DEALING**

**3. DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Skye Bioscience, Inc., formerly known as Nemus Bioscience, Inc.  
2 (“Skye”), complains of defendant Partner Re Ireland Insurance dac (“PartnerRe”)  
3 and alleges as follows:

4 **Nature of This Lawsuit**

5 1. This is a lawsuit by Skye to recover the full amounts owed under a  
6 Directors, Officers and Company Liability (“D&O”) insurance policy issued by  
7 PartnerRe. It arises out of PartnerRe’s wrongful and bad faith refusal to defend and  
8 indemnify Skye against claims asserted against the company in an underlying  
9 lawsuit titled *Cunning v. Skye Bioscience Inc.*, United States District Court, Central  
10 District of California, Case No. 8:21-cv-00710 (the “*Cunning* lawsuit”). The  
11 *Cunning* lawsuit alleges securities violations and specifically seeks damages for  
12 violations of the Sarbanes-Oxley Act, a securities regulation. Accordingly, the  
13 *Cunning* lawsuit falls squarely within the coverage afforded under the policy  
14 PartnerRe sold to Skye. However, rather than honoring its duties in connection with  
15 the *Cunning* lawsuit, PartnerRe chose to abandon its insured and repudiate its  
16 coverage obligations, thereby causing Skye to suffer considerable damages. By this  
17 lawsuit, Skye seeks to recover the policy benefits to which it is entitled, plus  
18 interest, attorneys’ fees, and punitive damages.

19 **Jurisdiction and Venue**

20 2. The Court has subject matter jurisdiction to hear this case under 28  
21 U.S.C § 1332 based on complete diversity of citizenship between the parties and  
22 because the amount in controversy, exclusive of costs and interest, exceeds \$75,000.

23 3. Venue is proper in this District because a substantial part of the events  
24 giving rise to Skye’s claims, including the delivery of the insurance policy at issue  
25 in this litigation and the defense and litigation of the *Cunning* lawsuit, occurred in  
26 this District. PartnerRe has also marketed, advertised, sold, and maintained  
27 insurance policies, and otherwise conducted extensive business, within this District.

**The Parties**

4. Skye is a Nevada corporation with a principal place of business in San Diego, California. Skye is a cutting-edge biopharmaceutical company, focused on the discovery, development and commercialization of new chemical entities derived from bioengineered cannabinoid molecules, such as THC and CBD. Skye is developing new and proprietary products designed to improve therapeutic treatments for multiple diseases, with a primary focus on ocular diseases.

5. Skye is informed and believes, and on that basis alleges, that Partner Re is a company organized under the laws of Ireland and has its principal place of business in Dublin, Ireland. Skye is informed and believes, and on that basis alleges, that PartnerRe is authorized to transact business, and transacts business, in the State of California and the County of Los Angeles.

**The Policy**

6. PartnerRe issued Directors, Officers and Company Liability Policy No. B0621PNEMU000218 (the “Policy”) to Skye (then known as Nemus Bioscience, Inc.) for the period of December 31, 2018, to December 31, 2020. Subject to a retention of \$250,000 per claim, the Policy provides \$5,000,000 in aggregate coverage for “Loss” resulting from each “Securities Claim.” A true and correct copy of at least the relevant portions of the Policy is attached hereto as Exhibit A and incorporated by reference.

7. The Policy obligates PartnerRe to:  
pay on behalf of [Skye] **Loss** resulting from any  
**Securities Claim** first made against the **Company** during  
the **Policy Period** for a **Wrongful Act**.

Exhibit A, § I.C.

8. The Policy defines “Securities Claim” to mean:  
any demand or proceeding [as more fully defined as a  
**Claim**] . . . against any of the **Insureds** . . .

alleging any violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission under either or both Acts, similar securities laws or regulations of any federal, state (including any state blue sky laws), local or any foreign jurisdiction, any other laws, rules, regulations or statutes regulating securities or any common law arising out of, involving, or relating to the ownership, purchase, sale or distribution of or offer to purchase, sell or distribute any securities of the Company, including any debt or equity securities, whether on the open market or through a public or private offering . . . .

*Id.*, § II.X.

9. The Policy defines “Claim” in pertinent part to mean: any written demand . . . against any of the **Insureds**, or any civil . . . proceeding . . . against any of the **Insureds**, including:

(a) any appeal from any such proceeding.

*Id.*, § II.B.1.

10. The Policy defines “Loss” to mean:

(a) damages, judgments, including pre and post-judgment interest, and settlements,

(b) **Inquiry Costs and Costs, Charges and Expenses**, and

1 (c) punitive, exemplary or multiplied damages where  
 2 the applicable law allows coverage for punitive,  
 3 exemplary or multiplied damages . . . .

4 *Id.*, § II.O.

5 11. “Costs, Charges and Expenses” is defined in the Policy to include  
 6 “reasonable and necessary legal fees and expenses including reasonable and  
 7 necessary expert fees incurred by the **Insureds** in defense and appeal of any  
 8 **Claim.**” *Id.* § II.E.

9 12. The Policy defines “Wrongful Act” to mean:  
 10 any actual or alleged act, error, omission, misstatement,  
 11 misleading statement, neglect or breach of duty:

12 . . .

13 3. by the **Company** involving a **Securities Claim**.

14 *Id.* § II.BB.

15 13. The Policy further states that “[m]ore than one **Claim** involving the  
 16 same **Wrongful Act** . . . shall be deemed to constitute a single **Claim** and shall be  
 17 deemed to have been made . . . the date on which the earliest **Claim** involving the  
 18 same **Wrongful Act** . . . is first made.” *Id.* § IV.C.

19 **The Cunning Lawsuit and PartnerRe’s Breaches**

20 14. On or about August 6, 2019, during the Policy’s policy period, Skye  
 21 received a demand letter from counsel for former employee Wendy Cunning. In her  
 22 demand letter, Ms. Cunning alleged, among other things, that she had been  
 23 wrongfully terminated after she complained about Skye’s unlawful conduct, which  
 24 she claimed included various violations of federal securities laws. She alleged that  
 25 Skye’s purported retaliation against her violated the Sarbanes-Oxley Act of 2002  
 26 and other state and federal laws. In her August 6, 2019, letter, Ms. Cunning  
 27 demanded that Skye pay her significant sums to compensate her for Skye’s alleged  
 28 wrongful acts and conduct.

1           15. On or about September 12, 2019, Skye reported Ms. Cunning's August  
2 6, 2019, demand letter to PartnerRe, seeking coverage under the Policy. On or  
3 about September 18, 2019, PartnerRe acknowledged receipt of Ms. Cunning's  
4 demand letter and agreed to treat Skye's notice as a circumstance which could give  
5 rise to a Claim under the Policy.

6           16. On April 16, 2021, Wendy Cunning filed a lawsuit against Skye in the  
7 United States District Court, Central District of California. Ms. Cunning's complaint  
8 included the same general allegations as those made in her August 6, 2019, demand  
9 letter. Ms. Cunning's complaint included causes of action for (1) Violation of  
10 Whistleblower Protections under the Sarbanes-Oxley Act (18 U.S.C. § 1514A *et*  
11 *seq.*); (2) Retaliation under California Labor Code § 1102.5; (3) Wrongful  
12 Termination in Violation of Public Policy; and (4) Intentional Inflection of  
13 Emotional Distress. A true and correct copy of the April 16, 2021, complaint in the  
14 *Cunning* lawsuit is attached hereto as Exhibit B and incorporated by reference.

15           17. On November 29, 2021, Ms. Cunning filed her First Amended  
16 Complaint, which included substantially similar allegations as her original  
17 complaint. Ms. Cunning's First Amended Complaint includes causes of action for  
18 (1) Violation of Whistleblower Protections under the Sarbanes-Oxley Act (18  
19 U.S.C. § 1514A *et seq.*) and (2) Retaliation under California Labor Code § 1102.5.  
20 A true and correct copy of the November 29, 2021, complaint in the *Cunning*  
21 lawsuit is attached hereto as Exhibit C and incorporated by reference.

22           18. In her lawsuit, Ms. Cunning alleges that Skye, through a former  
23 company director, engaged in "conduct – [including] misleading investors and  
24 insider trading – [that constituted] violations of [the Sarbanes-Oxley Act of 2002],  
25 securities laws and other possible legal violations." *See* Exhibit B, ¶ 32; *see also*  
26 Exhibit C, ¶ 37. As noted above, the *Cunning* lawsuit included a claim for violation  
27 of the Sarbanes-Oxley Act.  
28

1           19. When Congress enacted the Sarbanes-Oxley Act in 2002, it expressly  
2 amended the Securities Act of 1934 to include the Sarbanes-Oxley Act. *See*  
3 SARBANES–OXLEY ACT OF 2002, PL 107–204, July 30, 2002, 116 Stat 745.  
4 Thus, by operation of this Congressional amendment, a violation of the Sarbanes-  
5 Oxley Act is also considered a violation of the Securities Act of 1934.

6           20. Skye promptly reported the *Cunning* lawsuit to PartnerRe, seeking  
7 coverage under the Policy. Pursuant to the Policy’s terms, because Ms. Cunning’s  
8 August 6, 2019, demand letter and her subsequent lawsuit were premised on similar  
9 allegations and alleged the same “Wrongful Acts,” the *Cunning* lawsuit is deemed to  
10 be a “Claim” first made during the Policy’s policy period.

11           21. Pursuant to the Policy’s plain terms, the *Cunning* lawsuit constitutes a  
12 “Securities Claim” alleging “Wrongful Acts” against Skye. Accordingly, it falls  
13 squarely within the Policy’s coverage. However, without performing any  
14 meaningful investigation into Skye’s claims, and without regard to the breadth of  
15 coverage afforded under its Policy, PartnerRe unreasonably and incorrectly denied  
16 coverage. PartnerRe based its denial on an unreasonably narrow interpretation of the  
17 phrase “Securities Claim,” contrary to its duties under the Policy and the law.

18           22. Specifically, in denying coverage, PartnerRe incorrectly asserted that  
19 the *Cunning* lawsuit did not qualify as a covered “Securities Claim” as defined in  
20 the Policy. PartnerRe took this position even though the *Cunning* lawsuit plainly  
21 alleges securities law violations and includes a cause of action for violation of the  
22 Sarbanes-Oxley Act, a securities law. PartnerRe’s position was and is contrary to the  
23 law and the facts.

24           23. As a result of PartnerRe’s wrongful denial, Skye was forced to fund its  
25 own defense in the *Cunning* lawsuit. To date, Skye has been forced to pay  
26 approximately \$1,443,205 in defense fees and costs incurred in connection with the  
27 *Cunning* lawsuit without any assistance from PartnerRe, and Skye continues to incur  
28 legal fees and costs in connection with its defense. Furthermore, through its



1 wrongful denial of coverage, PartnerRe has repudiated its duty to indemnify Skye in  
2 connection with the *Cunning* lawsuit.

3 24. Through its wrongful denial and the other unreasonable conduct  
4 described above, PartnerRe breached its contractual obligations under the Policy and  
5 acted in bad faith.

6 25. A jury trial was conducted in the *Cunning* lawsuit in January 2023. On  
7 January 18, 2023, the jury rendered a verdict in favor of Ms. Cunning and awarded  
8 her \$4,853,460 in damages. The parties to the *Cunning* lawsuit are expected to file  
9 various post-trial motions in the coming weeks.

10 26. To the extent not waived or otherwise excused, Skye complied with all  
11 terms and conditions precedent contained in the Policy. Therefore, Skye is entitled  
12 to all benefits of insurance provided by the Policy.

13 **First Cause of Action**

14 ***(For Breach of Contract)***

15 27. Skye realleges and incorporates by reference paragraphs 1 through 26  
16 above, inclusive.

17 28. PartnerRe has a duty under the Policy, the law, and insurance industry  
18 custom and practice to pay Skye's fees and costs incurred in connection with the  
19 defense of the *Cunning* lawsuit. PartnerRe's duty arose at least at the time Skye's  
20 reasonable and necessary defense fees and costs exceeded the Policy's applicable  
21 retention and will continue through final resolution of the *Cunning* lawsuit, or until  
22 the Policy has been exhausted.

23 29. PartnerRe also has a duty under the Policy to indemnify Skye for any  
24 settlement or judgment in the *Cunning* lawsuit.

25 30. Furthermore, PartnerRe had a duty under the Policy, the law, and  
26 insurance industry custom and practice to promptly conduct a full and thorough  
27 investigation, including all bases that might support Skye's claim for coverage for  
28 the *Cunning* lawsuit. PartnerRe also had a duty to give at least as much



1 consideration to Skye's interests as it gave its own interests in assessing coverage  
2 for the *Cunning* lawsuit.

3 31. PartnerRe breached its duties under the Policy by, among other things,

4 a. Failing to perform a meaningful investigation into Skye's claim  
5 for coverage for the *Cunning* lawsuit;

6 b. Failing and refusing to pay or reimburse Skye's legal fees and  
7 costs incurred in connection with the defense of the *Cunning*  
8 lawsuit;

9 c. Failing to acknowledge its duty to indemnify Skye for any  
10 settlement or judgment in the *Cunning* lawsuit;

11 d. Asserting grounds for limiting coverage for the *Cunning* lawsuit  
12 that it knows are not supported by, and in fact are contrary to, the  
13 terms of the Policy, the law, insurance custom and practices, and  
14 the facts; and

15 e. Otherwise refusing to perform duties under the Policy.

16 32. As a direct and proximate result of PartnerRe's breach of contract,  
17 Skye has sustained at least \$1,443,205 in damages, plus interest at the legal rate.

18 Skye continues to suffer damages because of PartnerRe's contractual breaches and  
19 will seek leave to amend this complaint once it ascertains the full extent of its  
20 damages.

## 21 **Second Cause of Action**

22 ***(For Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)***

23 33. Skye realleges and incorporates by reference paragraphs 1 through 26  
24 above, and 28 through 31 above, inclusive.

25 34. Implied in the Policy was a covenant that PartnerRe would act in good  
26 faith and deal fairly with Skye, that PartnerRe would do nothing to interfere with the  
27 rights of Skye to receive benefits due under the Policy, and that PartnerRe would  
28

1 give at least the same level of consideration to Skye's interests as it gave to its own  
2 interest.

3 35. PartnerRe also had a duty under the Policy, the law, and insurance  
4 industry custom, practice, and standards to conduct a prompt and thorough  
5 investigation including all of the bases that might support Skye's claim for  
6 coverage, before asserting coverage defenses or denying coverage.

7 36. Instead of complying with these duties, PartnerRe breached its implied  
8 covenant of good faith and fair dealing and acted in bad faith by, among other  
9 things,

- 10 a. Failing to promptly conduct a full and thorough investigation of  
11 the *Cunning* lawsuit;
- 12 b. Failing to inquire into bases that might support coverage for the  
13 *Cunning* lawsuit;
- 14 c. Unreasonably failing and refusing to honor its promises and  
15 representations in the Policy;
- 16 d. Wrongfully and unreasonably asserting grounds for denying  
17 coverage for the *Cunning* lawsuit that it knows are not supported  
18 by, and in fact are contrary to, the terms of the Policy, the law,  
19 insurance custom and practices, and the facts;
- 20 e. Giving greater consideration to its own interests than it gave to  
21 Skye's interests; and
- 22 f. Otherwise acting as alleged above.

23 37. In breach of the implied covenant of good faith and fair dealing,  
24 PartnerRe did the things and committed the acts alleged above for the purpose of  
25 consciously withholding from Skye the rights and benefits to which it is and was  
26 entitled under the Policy. PartnerRe's acts are inconsistent with the reasonable  
27 expectations of Skye, are contrary to established insurance industry custom and  
28

1 practice, are contrary to legal requirements, are contrary to the express terms of the  
2 Policy, and constitute bad faith.

3 38. Skye's damages were foreseeable given the purpose of the Policy was  
4 to provide coverage for "Securities Claims" like the *Cunning* lawsuit.

5 39. As a direct and proximate result of PartnerRe's acts, Skye has sustained  
6 at least \$1,443,205 in damages, plus interest at the legal rate. Skye continues to  
7 suffer damages because of PartnerRe's bad faith and will seek leave to amend its  
8 complaint once Skye ascertains the full extent of its damages. Also, pursuant to  
9 *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), Skye is entitled to recover  
10 attorneys' fees that it has previously incurred, and continues to incur, in its efforts to  
11 obtain the benefits due under the Policy that PartnerRe wrongfully withheld, and is  
12 withholding, in bad faith. Skye also is entitled to interest thereon at the maximum  
13 legal rate.

14 40. Skye is informed and believes, and on that basis alleges, that  
15 PartnerRe—acting through one or more of its officers, directors, or other corporate  
16 employees with substantial independent and discretionary authority over significant  
17 aspects of its business—performed, authorized, or ratified the bad faith conduct  
18 alleged above.

19 41. PartnerRe's conduct is despicable and has been done with a conscious  
20 disregard of Skye's rights, constituting oppression, fraud, and/or malice. PartnerRe  
21 has engaged in a series of acts designed to deny Skye the benefits due under the  
22 Policy. Specifically, PartnerRe, by acting as alleged above, in light of information,  
23 facts, and relevant law to the contrary, consciously disregarded Skye's rights and  
24 forced Skye to incur substantial financial losses, thereby inflicting substantial  
25 financial damage on Skye. PartnerRe ignored Skye's interests and concerns with the  
26 requisite intent to injury within the meaning of California Civil Code section 3294.  
27 Therefore, Skye is entitled to recover punitive damages from PartnerRe in an  
28

1 amount sufficient to punish and to make an example of PartnerRe and to deter  
2 similar conduct in the future.

3 **Third Cause of Action**

4 ***(For Declaratory Relief)***

5 42. Skye realleges and incorporates by reference paragraphs 1 through 26  
6 above.

7 43. A controversy exists between Skye and PartnerRe. Skye contends that  
8 PartnerRe has a duty to cover Skye's defense costs incurred in connection with  
9 the *Cunning* lawsuit and indemnify Skye for any settlement or judgment in the  
10 *Cunning* lawsuit. PartnerRe disputes Skye's contentions.

11 44. Therefore, declaratory relief is necessary to determine Skye's rights  
12 under the Policy. Specifically, Skye seeks a declaration from the Court that  
13 PartnerRe is obligated to reimburse Skye for the defense fees and costs it incurred in  
14 defense of the *Cunning* lawsuit. Skye further seeks a declaration from the Court that  
15 PartnerRe is obligated to indemnify Skye for any settlement or judgment in the  
16 *Cunning* lawsuit.

17 45. A declaration is necessary at this time so that the parties' dispute may  
18 be resolved and that the parties may be aware of their respective rights and duties.

19  
20 **Prayer for Relief**

21 WHEREFORE, Skye prays for relief as follows:

22 **On the First Cause of Action**

23 1. For damages, plus interest, according to proof at the time of trial;

24 **On the Second Cause of Action**

25 2. For damages according to proof at the time of trial, including  
26 reasonable attorneys' fees incurred in obtaining the benefits due under the Policy,  
27 plus interest;

28 3. For punitive damages in an amount to be determined at the time of trial;

**On the Third Cause of Action**

4. For a declaration in accord with Skye's contentions stated above;

**On All Causes of Action**

5. For costs of suit incurred herein; and

6. For such other, further, and/or different relief as may be deemed just and proper.

DATED: February 17, 2023

PASICH LLP

By: /s/ Jacquelyn M. Heitman

Shaun H. Crosner  
Jacquelyn M. Heitman  
Attorneys for Plaintiff

PASICH<sup>LLP</sup>

**Demand for Jury Trial**

Plaintiff Skye Bioscience, Inc. hereby demands a trial by jury in this action.

DATED: February 17, 2023

PASICH LLP

By: /s/ Jacquelyn M. Heitman

Shaun H. Crosner  
Jacquelyn M. Heitman  
Attorneys for Plaintiff

PASICH<sub>LLP</sub>